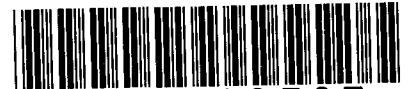


ORIGINAL



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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

KRISTIN K. MAYES - CHAIRMAN

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

2010 MAY -5 P 3:46

AZ CORP COMMISSION
DOCKET CONTROL

LEVEL 3 COMMUNICATIONS, LLC

Complainant,

vs.

QWEST CORPORATION,

Respondent

DOCKET NO. T-03654A-05-0415

DOCKET NO. T-01051B-05-0415

**NOTICE OF FINAL ORDER AND
REMAND**

AND

**MOTION FOR PROCEDURAL
CONFERENCE**

Level 3 Communications, LLC ("Level 3") provides notice that the Ninth Circuit has issued an order in the matter of Level 3's appeal of the March 6, 2008 Order of the United States District Court, which had remanded the appeal of Decision No. 68855 (July 28, 2006) to the Arizona Corporation Commission for further proceedings. The Ninth Circuit demurred from addressing the substantive grounds of Level 3's appeal and dismissed the case on procedural grounds. The Court found that District Court's order was not a final, appealable order. A copy of the Ninth Circuit order and related mandate is attached as Exhibit 1.

As a result of the Ninth Circuit order, the procedural status of this docket is similar to that of the complaint involving PacWest Communications and Qwest (Docket No. T-01051B-05-0495 et al.), which is on remand from the Arizona District Court and stayed pending the outcome of Level 3's appeal the Ninth Circuit. See November 3, 2009 Procedural Order in Docket No. T-01051B-05-0495 et al.

Arizona Corporation Commission
DOCKETED

MAY - 5 2010



ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Level 3 requests a procedural conference to address how to proceed.¹ Because the FCC and
2 the U.S. Court of Appeals in Core Communications, Inc. (Docket 08-1365) have substantiated
3 Level 3's position that ISP bound traffic can only be subject to local reciprocal compensation and
4 not access charges as Qwest has argued, Level 3 requests, at a minimum, the opportunity to brief
5 the issues on remand from the District Court's order.

6 Level 3 also proposes that the procedural conference be a joint procedural conference with
7 the Pac West docket (Docket No. T-01051B-05-0495 et al.). Level 3 is providing a copy of this
8 Notice and Motion to counsel for Pac West and Qwest.

9 WHEREFORE Level 3 requests that a joint procedural conference be scheduled for this
10 docket and Docket No. T-01051B-05-0495 et al.

11 RESPECTFULLY SUBMITTED this 5th day of May 2010.

12
13 ROSHKA DEWULF & PATTEN, PLC

14
15 By 

16 Michael W. Patten
17 One Arizona Center
18 400 East Van Buren Street, Suite 800
19 Phoenix, Arizona 85004

20
21 Attorneys for Level 3 Communications, LLC
22
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24
25
26
27

¹ Level 3 will attend the prehearing conference in person.

ROSHKA DeWULF & PATTEN, PLC
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PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
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1 Original and 15 copies of the foregoing
2 filed this 5th day of May 2010 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered/mailed
6 this 5th day of May 2010 to:

7 Jane Rodda, Esq
8 Administrative Law Judge
Hearing Division
9 Arizona Corporation Commission
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10 Maureen A. Scott, Esq
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21 Phoenix, AZ 85003

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23 By Mary Appolito
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27

EXHIBIT

"1"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 19 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

QWEST CORPORATION,

Plaintiff - Appellee,

v.

LEVEL 3 COMMUNICATIONS LLC,

Defendant - Appellant,

MIKE GLEASON; et al.,

Defendants - Appellees,

and

PAC-WEST TELECOMM, INC.,

Defendant,

ARIZONA CORPORATION
COMMISSION,

Defendant.

No. 08-15887

D.C. No. 2:06-CV-02130-SRB
U.S. District Court for Arizona,
Phoenix

MANDATE

The judgment of this Court, entered March 26, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Lee-Ann Collins
Deputy Clerk

FILED

NOT FOR PUBLICATION

MAR 26 2010

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

QWEST CORPORATION,

Plaintiff - Appellee,

v.

ARIZONA CORPORATION
COMMISSION,

Defendant,

MIKE GLEASON et al.,

Defendants - Appellees,

LEVEL 3 COMMUNICATIONS, LLC,

Defendant - Appellant,

and

PAC-WEST TELECOMM, INC.,

Defendant,

No. 08-15887

D.C. No. 2:06-CV-02130-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued November 4, 2009; Resubmitted February 19, 2010
San Francisco, California

Before: B. FLETCHER, CANBY, and GRABER, Circuit Judges.

Level 3 Communications, LLC ("Level 3"), and Qwest Corporation ("Qwest") entered into an Interconnection Agreement to provide for the exchange of Internet Service Provider ("ISP")-bound traffic pursuant to the Telecommunications Act of 1996 ("the Act"). The parties agreed to exchange "ISP-bound traffic (as that term is used in the FCC [Federal Communications Commission] ISP [Remand] Order) at the FCC ordered rate, pursuant to the FCC ISP [Remand] Order." Level 3 filed a complaint with the Arizona Corporation Commission ("Commission"), claiming that this provision required Qwest to pay intercarrier compensation to Level 3 for virtual NXX calls (calls to a customer whose area code bears no relation to its physical location). The Commission ruled in favor of Level 3, and Qwest appealed to the district court. Level 3 now appeals an order from the district court that remanded the case to the Commission.

We dismiss the appeal as being from a non-final order. A remand order is considered final where (1) the district court conclusively resolves a separable legal issue, (2) the remand order forces the agency to apply a potentially erroneous rule which may result in a wasted proceeding, and (3) review would, as a practical matter, be foreclosed if an immediate appeal were unavailable.

Chugach Alaska Corp. v. Lujan, 915 F.2d 454, 457 (9th Cir. 1990). Here, the remand order fails the third prong because denying an appeal now would not foreclose review in the future. The district court in this case did not resolve Qwest's claims for relief, and it did not enter a final judgment. In fact, the district court did not enter judgment on any of the issues presented by Qwest.

Our precedent instructs that a remand order may be considered a final, appealable order only when "review would, as a practical matter, be foreclosed if an immediate appeal were unavailable." Alsea Valley Alliance v. Dep't of Commerce, 358 F.3d 1181, 1184 (9th Cir. 2004) (internal quotation marks omitted). Neither party is foreclosed from seeking appellate review, in the future, of any legal determination made in the district court's final order. Because the remand order is not a final, appealable order, we must dismiss the appeal. See Williamson v. UNUM Life Ins. Co. of Am., 160 F.3d 1247 (9th Cir. 1998) (holding that a remand order was not a final order); Alsea Valley Alliance, 358 F.3d at 1184 (same).

DISMISSED.



ca9_ecfnoticing@ca9.uscourts.gov

04/19/2010 12:12 PM

To

cc

bcc

Subject 08-15887 Qwest Corporation v. LEVEL 3 COMMUNICATIONS LLC, et al "Mandate Issued"

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United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 04/19/2010 at 12:10:11 PM PDT and filed on 04/19/2010

Case Name: Qwest Corporation v. LEVEL 3 COMMUNICATIONS LLC, et al

Case Number: 08-15887

Document(s): Document(s)

Docket Text:

MANDATE ISSUED.(BBF, WCC and SPG) [7306429] (LC)

The following document(s) are associated with this transaction:

Document Description: Mandate Order

Original Filename:

/opt/ACECF/live/forms/leeann_0815887_7306429_v2Order-Mandate_216.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=04/19/2010] [FileNumber=7306429-0]
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379b80a5c84ebd984bbfb728fd4a534ed0a9233794390137aa899f4ce1]]

Recipients:

- Ms. Alward, Janice, Chief Counsel
- Ms. Burke, Joan S., Attorney
- Curtright, Norman G
- Derstine, John Matthew, Attorney
- Dethlefs, Thomas M., Attorney
- Mr. Devaney, John Michael, Counsel
- Mr. Patten, Michael, Attorney
- Savage, Christopher W.
- Ms. Scott, Maureen A., Senior Attorney

- USDC, Phoenix
- Wright, Christopher J.

Notice will be electronically mailed to:

Ms. Alward, Janice, Chief Counsel
Ms. Burke, Joan S., Attorney
Derstine, John Matthew, Attorney
Mr. Devaney, John Michael, Counsel
Mr. Patten, Michael, Attorney
Ms. Scott, Maureen A., Senior Attorney
USDC, Phoenix
Wright, Christopher J.

Case participants listed below will not receive this electronic notice:

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The following information is for the use of court personnel:

DOCKET ENTRY ID: 7306429
RELIEF(S) DOCKETED:
DOCKET PART(S) ADDED: 6937811